

**MARGER JOHNSON & McCOLLOM**  
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Group Art Unit 1755

FAX: 703-305-5408

FROM: James G. Stewart

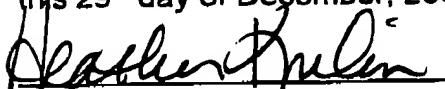
DATE: December 29, 2000

Number of pages (including this one):

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Our Ref. No.: 1941-70

I certify that the foregoing Response is being  
transmitted via facsimile to Examiner Marcantoni  
at Group Art Unit fax number 703-305-5408 on  
this 29<sup>th</sup> day of December, 2000.

  
Heather Kulin**REMARKS**

Please forward the following to Examiner Marcantoni as soon as possible.

**NOTICE-**

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GROUP 1700  
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RESPONSE UNDER 37 CFR 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 1755

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Paul J. BRUINSMA, Suresh BASKARAN, Jagannadha R. BONTHA  
and Jun LIU

Serial No. 09/481,988

Examiner: P. Marcantoni

Filed: January 11, 2000

Group Art Unit: 1755

For: MESOPOROUS-SILICA FILMS, FIBERS, AND POWDERS BY EVAPORATION

Date: December 29, 2000

Box NON-FEE AMENDMENT  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Responsive to the Final Office Action dated December 7, 2000, enclosed is an amendment in the above-identified application.

The fee has been calculated as shown below.

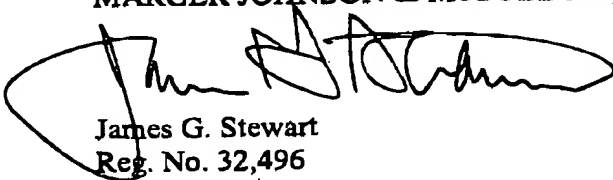
<u>CLAIMS AS AMENDED</u>					
For:	Number After Amendment	Previous Number	Extra	Rate	Additional Fee
Total Claims	75	-75	0	x \$9 =	\$0
Independent Claims	14	-14	0	x \$39 =	\$0
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT					\$0

The Commissioner is hereby authorized to charge or credit any deficiency or overpayment to deposit account number 13-1703.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

Date: December 29, 2000

  
James G. Stewart  
Reg. No. 32,496

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RESPONSE UNDER 37 CFR 1.116  
EXPEDITED PROCEDURE  
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**AMENDMENT AFTER FINAL REJECTION UNDER 37 CFR 1.116**

Responsive to the Office Action dated December 7, 2000, reconsideration by the Examiner is respectfully requested of his position regarding two critical issues: 1) the proper legal standard and proper application of that standard in examining applicants' reissue patent application under 35 USC § 112 ¶ 1 (commensurate in scope and new matter) and 2) the propriety of rejecting claim 31 under MPEP §§ 1402, 1450-51 (the recapture rule).

**Rejections Based on 35 USC § 112 ¶ 1:  
(Commensurate in Scope and New Matter)**

The rejections of claims 28-77 are based on 35 USC § 112, ¶1. Specifically, the claims as pending have been declared by the Examiner to be inadequately supported in the application. Stemming from the same statutory provision, the grounds (rejections for new matter and claims not commensurate in scope with the disclosure of the specification) are closely related. The Examiner cites several occasions wherein "literal" or "specific" support for the claimed limitations was not found. Applicants respectfully submit that the Examiner has applied an improper legal standard in determining the teaching of the present application.